IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

WP(C).No. 30484 of 2006(D)

PETITIONERS:
----

1. **K. PODIYAN, AGED 55,**
   S/O. KANDAN, VILAYIL VEEDU, THUMBAMONTHAZHAM.

2. **ASHOK KUMAR V., AGED 33 YEARS,**
   S/O. VASUDEVAN NAIR, LEKSHMI NIVAS,
   THONNALLUR, PANDALAM.

3. **C.G. BINU, AGED 22,**
   S/O. P.K.GOPI, CHIRAKKAROTTU VEEDU,
   ULANADU, KULANADA.

4. **AJITH KUMAR V.R., AGED 33 YEARS,**
   S/O.RAMACHANDRAN NAIR, VALIYAVILA THEKKETHIL VEEDU
   ULANADU, KULANADA.

5. **G. VRIJABHOOSHANAN NAIR, AGED 55 YEARS,**
   S/O. GOVINDA PILLAI, GOVINDA MANGALAM,
   VALAMCHUZHY, PATHANAMTHITTA.

6. **SADASIVAN P., AGED 40 YEARS,**
   S/O.CHELLAPPAN PILLAI, SIVA BHAVANAM,
   MULAMPUZHA, PANDALAM.

7. **MANMOHAN, AGED 35 YEARS,**
   S/O. SIVARAMA PANICKER, MANU SADANAM, KULANADA.

8. **VINOOP G., AGED 28 YEARS,**
   S/O. GOPI, MARUTHOORTHEKKETHIL, THOTTAKKONAM,
   PANDALAM.

9. SUNDARSANA KUMAR, AGED 38 YEARS,
S/O. T.R.KRISHNA PILLAI, CHUVANNAPLACKAL, RANNI.

BY ADV. SRI.T.M.ABDUL LATHEEF.

RESPONDENTS:
----

1. DISTRICT COLLECTOR, PATHANAMTHITTA.

2. TAHSILDAR, KOZHENCHERRY.

3. TAHSILDAR, ADOOR.

4. PANDALAM GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, PANDALAM.

5. THUMBAMON GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, THUMBAMON.

6. CHENNEERKKARA GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, CHENNEERKKARA.

7. KULANADA GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, KULANADA.

8. PATHANAMTHITTA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, PATHANAMTHITTA.

SR. GOVERNMENT PLEADER SRI. K.J. MUHAMMED ANZAR,
R6 BY ADV. SRI.N.SUKUMARAN,
SRI.S.SHYAM,
SRI.N.K.KARNIS,
SRI.SUNIL JACOB JOSE,
SRI.V.K.SUNIL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.30484/2006-D:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE CIRCULAR NO. 71734/P1/2004 REVENUE DTD. 01/02/2005.

EXT.P.2: COPY OF THE RECEIPT NO. 3 DTD. 11/10/2006 ISSUED BY THE R.2. TO THE P.1.

EXT.P.2.A: COPY OF THE RECEIPT NO.2. DTD. 11/10/2006 ISSUED BY THE R.2. TO THE P.2.

EXT.P.2.B: COPY OF THE RECEIPT O.4. DTD. 11/10/2006 ISSUED BY THE R.2. TO THE P.4.

EXT.P.2.C: COPY OF THE RECEIPT NO. 18 DTD. 11/10/2006 ISSUED BY THE R.2. TO THE P.5.

EXT.P.2.D: COPY OF THE RECEIPT NO. 48 DTD. 11/10/2006 ISSUED BY THE R.3. TO THE P.6.

EXT.P.2.E: COPY OF THE RECEIPT NO. 52 DTD. 11/10/2006 ISSUED BY THE R.3. TO THE P.6.

EXT.P.2.F: COPY OF THE RECEIPT NO. 53 DTD. 11/10/2006 ISUED BY THE R.3. TO THE P.6.

EXT.P.2.G: COPY OF THE RECEIPT NO. 51 DTD. 11/10/2006 ISSUED BY THE R.3. TO THE P.7.

EXT.P.2.H: COPY OF THE RECEIPT NO. 49 DTD. 11/10/2006 ISSUED BY THE R.3. TO THE P.8.

EXT.P.3: COPY OF THE NEW ITEM APPEARED IN MATHRUBHUMI DAILY DTD. 01/11/2006.

EXT.P.4: COPY OF THE NEW ITEM APPEARED IN MATHRUBHUMI DAILY DTD. 07/11/2006.

EXT.P.5: COPY OF THE ORDER NO. C9-3957/05 DTD. 04/03/2006 OF THE R.1.

EXT.P.6: COPY OF THE JUDGMENT DTD. 01/03/2006 PASSED BY THIS HONOURABLE COURT IN W.P.(C). 3305/2006.

EXT.P.7: COPY OF THE PETITION DTD. 10/11/2006 SUBMITTED BY THE PETITIONERS BEFORE THE R.1.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 30484 OF 2006

Dated this the 10th day of September, 2007

JUDGMENT

Petitioners are persons who participated in the auction conducted by respondents 2 and 3 (Tahsildar, Kozhencherry and Tahsildar Adoor) auctioning the right to collect river sand from Achankovil river flowing through the area of the Pandalam Grama Panchayat, Thumbamon Grama Panchayat, Chenneerkkara Grama Panchayat, Kulanada Grama Panchayat and Pathanamthitta Municipality. The auction was regulated by Ext.P1 Government Circular. The petitioners point out that apart from Ext.P1, there are provisions in Act 18 of 2001 regarding sand collection and factors such as local need and availability of sand are to be taken into account while auction is conducted. In the auction so conducted for the period from 16.10.06 to 31.10.06, the petitioners purchased the right to collect river sand on varying prices.

2. The grievance of the petitioners is that though they paid the auction amounts, they were unable to quarry river sand due to very heavy rain in the area. Therefore, fresh auction could not have been conducted. Respondents 2 and 3 attempted to conduct auction by issuing a report in the paper. However, no auction was conducted since authorities themselves were satisfied about the illegality in conducting

auction and also about the impossibility of collecting river sand. Petitioners submit that they have suffered heavy loss since they had made arrangements to quarry river sand based upon the right purchased by them to collect the sand. Petitioners have now altogether lost 16 days, the period for which the right is already given. They point out that extension is to be given to them so that they will be able to extract sand for the full period during which they were entitled to by virtue of the right purchased by them. The petitioners have filed a petition, Ext.P7 dt.10.11.06 before the District Collector, Pathanamthitta voicing their grievances and seeking extension of the period to quarry river sand and further requesting that by taking into account the increase in price they be given the right. The petitioners rely on Ext.P6 judgment of this Court which according to them has been rendered on similar facts. They also rely on Ext.P5 order passed by the District Collector granting extension of period in similar circumstances.

3. I have heard the submissions of Sri.T.M.Abdul Latheef, learned counsel for the petitioner and those of Sri.K.J.Mohammed Anzar, learned Government Pleader. Though Mr.Anzar resisted all the submissions of Mr.Latheef on the basis of the detailed counter affidavit submitted by the 2nd respondent Tahsildar, I am of the view that since Ext.P7 is pending before the District Collector, the District Collector can

be directed to pass orders on the same considering the petitioners' request for refund of at least a portion of the amounts deposited by them taking into account the days during which they could not extract sand on account of torrential rain.

In the result, the Writ Petition is disposed of issuing the following directions:

The 1st respondent District Collector is directed to hear the petitioners and pass orders on Ext.P7 considering their request for refund of at least a portion of the amounts deposited by them taking into account the days during which they were prevented from extracting sand on account of torrential rain.

The Writ Petition is allowed to the limited extent.

PIUS C. KURIAKOSE, JUDGE

btt